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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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O'MELVENY & MYERS LLP
400 So. Hope Street
Los Angeles, CA 90071-2899

EXAMINER

TORRES, MARCOS L

| ART UNIT | PAPER NUMBER |
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2683

DATE MAILED: 12/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/851,392

Applicant(s)

CUTAIA ET AL.

Examiner

Marcos L Torres

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-4, 6 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saaverda in view of Rasanen.

As to claim 1, Saaverda discloses a method for managing telecommunications services provided by a colocation site in a telecommunications resources (see col. 5, lines 56-65), the method comprises the steps of: communicating with customers regarding at least one telecommunications resource within the at least one colocation site (see col. 8, lines 10-12); managing provisioning of said at least one telecommunications resource within the at least one colocation site in response to communications with said customers (see col. 6, lines 31-38, 91-16); collecting information on operation of said at least one telecommunications resource; and reporting to said customers based on said collected information (see col. 8, lines 6-15; col. 9, lines 6-29). Saaverda does not specifically disclose that the colocation site have a plurality of disparate non-homogenous telecommunications resources. Rasanen discloses a plurality of disparate non-homogenous telecommunications resources (see col. 4, lines 48-67). Also, this is admitted in the prior art (see page 3, line 14 – page 4, line 30). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to use this method in non-homogenous telecommunication resources.

As to claim 2, Saaverda discloses the method wherein the communicating step further comprises receiving requests for pre-sales information including pricing, availability, and space within the colocation site (see col. 8, lines 6-15).

As to claim 3, Saaverda discloses the method wherein the communicating step further comprises receiving an order for use of said at least one telecommunications resource (see col. 8, lines 20-22).

As to claim 4, Saaverda discloses the method wherein said communicating step further comprises providing said customers with account status (see col. 14, lines 49-54).

As to claims 11 and 12, the method, wherein said managing step further comprises installing equipment provided by said customers within said colocation site and providing rack space and electrical power for said equipment provided by said customers is disclosed in the admitted prior art (see page 2, lines 20-24).

As to claims 6 and 13, Saaverda discloses the method wherein said managing step further comprises maintaining a database reflecting status of all telecommunications resources in said at least one colocation site, said status further including at least one of identification of equipment, space availability, capacity, current load, and customer allocation (see col. 9, lines 30-42; col. 10, lines 11-67).

As to claim 14, Saaverda discloses the method wherein said collecting step further comprises collecting data in accordance with TCP/IP protocol from network devices in a colocation site (see col. 20, lines 5-7). Saaverda do not specifically disclose using Simple Network Management Protocol (SNMP). However, he discloses that any well known protocol can be used, since Simple Network Management Protocol is a common and well known protocol, it would have been obvious to one of the ordinary skill in the art at the time of the invention to use this protocol.

5. Claims 5,7-10 and 15-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saaverda in view of Rasanen as applied to claims 1-4, 6 and 11-14 above, and further in view of Cornell.

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As to claims 7 and 20, Saaverda does not specifically disclose the method wherein the managing step further comprises changing connections between said at least one telecommunications resource and at least one other telecommunications resource. Cornell discloses the method wherein the managing step further comprises changing connections between said at least one telecommunications resource and at least one other telecommunications resource (see abstract). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to combine both teachings for an increased profit having enhanced management of the telecommunication resources.

As to claim 17, OFFICIAL NOTICE IS TAKEN that the method of generating billing reports reflecting usage of a telecommunications resource is a common and well known technique. Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to add this technique in order to have financial gain.

As to claims 5, 8-10 and 18-19, OFFICIAL NOTICE IS TAKEN that the method of monitoring and reporting trouble reports, providing technical support, and monitoring performance status in a telecommunications resource is a common and well known technique. Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to add this technique to the Saaverda system for the simple purpose of having a reliable system.

As to claims 15 and 16, OFFICIAL NOTICE IS TAKEN that the method of collecting and archiving a video record of physical activity is a common and well known technique. Therefore, it would have been obvious to one of the ordinary skill in the art at

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the time of the invention to record and archive video in the colocation site for security purposes.

Regarding claims 21-40, they are the corresponding apparatus claims of method claims 1-20. Therefore, claims 21-40 are rejected for the same reason shown above.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Farris U.S. Patent US005805997A

Any response to this Office Action should be mailed to:

Commissioner of Patent and Trademarks
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Or faxed to:

(703) 703-872-9314

For formal communication intended for entry, informal communication or draft communication; in the case of informal or draft communication, please label "PROPOSED" or "DRAFT"

Hand delivered responses should be brought to:

Crystal Park II
2121 Crystal Drive
Arlington, VA
Sixth Floor (Receptionist)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marcos L Torres whose telephone number is 703-305-1478. The examiner can normally be reached on 8:00am-5:30pm alt. friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William G Trost can be reached on 703-308-5318. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.

Marcos L Torres
Examiner
Art Unit 2683

Mlt



**WILLIAM TROST
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600**